

## **REMARKS**

Claims 1-34 are pending and stand rejected as final. Applicants have amended claims 1, 30 and 34. The specification has been amended. Reconsideration of the rejection is respectfully requested in view of these amendments and the following remarks.

Applicants respectfully submit that the instant amendments can be entered at this stage of prosecution because, and among other reasons, the amendments merely attend to formal matters raised by the Action, e.g., claim and specification objections, and claim rejections under 35 USC §112.

### **Specification**

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter, specifically for the claimed “tissue conductive matrix”. Applicants respectfully submit that the instant amendment to the specification renders this objection moot.

### **Claim Objections**

Claims 1, 30 and 34 were objected to because of a number of informalities. Applicants respectfully submit that they have now made appropriate corrections and that these corrections render the objections moot.

### **Claim Rejections - 35 USC §112**

Claims 30-34 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants respectfully submit that amendment of claims 30 and 34 to clarify that the claimed subject matter is “fibers” (plural) should render this rejection moot.

### **Claim Rejections - 35 USC §102**

Claims 1-34 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication US2002/0183855 to Yamamoto et al. (hereinafter referred to as “Yamamoto”). Applicants respectfully traverse this rejection.

The Action stated that “the Yamamoto matrix comprises the same materials as Applicants’ matrix, using the same ratios and consistency, and is intended for the same purpose(s). The results will inherently be the same.” Applicants respectfully disagree with this statement.

The claimed invention is compositionally different from Yamamoto. Among the differences is the fact that Yamamoto mineralizes his matrix by stirring insoluble collagen fibrils in a reactor containing calcium chloride and tribasic sodium phosphate with such reactor being maintained at a pH of about 11. A chemical reaction ensues, and calcium phosphate is deposited onto the collagen fibrils. This results in a chemical adhesion of this mineral to the fiber. Yamamoto confirms this in his Paragraph [0036]: **“It is an aspect of the present invention that the calcium phosphate minerals, typically present as hydroxyapatite, are immobilized on the matrix, as opposed to being freely mobile throughout the matrix.”** In contrast, the fibers of the presently claimed invention are not mineralized or “immobilized” as required by Yamamoto. The instant specification is completely silent about these reactants and this reaction. The closest that the instant specification comes to what Yamamoto describes is in the embodiment in which a calcium salt such as calcium sulfate is added to the soluble/insoluble collagen slurry. See, for example, the paragraph bridging pages 37 and 38. **But here, the addition is by mere blending or mixing, and there is no known chemical immobilization of the calcium salt on the fibers,** applicants respectfully submit.

Since there are compositional differences between the material of Yamamoto and that of the claimed invention, it is not surprising that the respective materials behave differently, that is, they have different properties. In particular, the material of Yamamoto has shape memory. See, for example, Paragraphs [0031] and [0034]. **In contrast, the material of the claimed invention does not have shape memory.** Instead, it has a paste or putty consistency. Applicants respectfully submit that the phrase “shape memory” is exclusive of the phrase “putty or paste consistency”. For example, “shape memory” connotes a material that springs back to its original shape after a deforming force is removed. An example of a shape memory material is a wet sponge. In contrast, a putty or paste does not spring back, at least not to its original shape, but instead maintains a certain and significant amount of permanent deformation in response to the deforming force applied, applicants respectfully submit.

Accordingly, applicants respectfully request that this rejection be withdrawn.

The Office made the instant Action a Final Office Action, even though it is the first Action after a Request for Continued Examination. The Office made this Action final on grounds that all of the claims are drawn to the same invention claimed in the application prior to entry of the RCE, and that they could have been finally rejected on the grounds and art of record in the next Action if they had been entered in the application prior to entry of the RCE. Applicants respectfully traverse this finality of this Office Action.

The legal standard for making the first action in a continuing application a final Office Action is where (A) the new application is a continuing application of, or substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. MPEP §706.07(b).

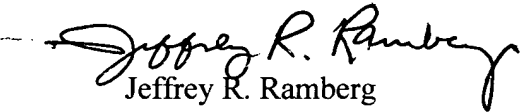
Applicants respectfully submit that the instant Final Office Action does not meet this standard. In particular, the claims of the instant continuing application are not drawn to the same invention claimed in the earlier application. More specifically, the new claims contain the important new feature of having a paste or putty consistency.

Accordingly, applicants respectfully request that the finality of the instant rejection be withdrawn.

In view of the above amendments and remarks, applicants respectfully submit that the present application is in condition for allowance. Accordingly, applicants respectfully request issuance of a Notice of Allowance directed to claims 1-34.

Should the Examiner deem that any further action on the part of applicants would be desirable, the Examiner is invited to telephone applicants' undersigned representative.

Respectfully submitted,

  
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September 27, 2005

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